

IN THE MATTER OF	:	BEFORE THE
HIGHLAND HOLDING GROUP LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 12-015V

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DECISION AND ORDER

On September 13, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Highland Holding Group LLC (Petitioner) for variances to reduce the 100-foot structure and use setback from a residential district to (1) 73.2 feet for a cooler access, (2) 43.7 feet for trash removal and (3) 16.5 feet for a parking use and delivery access, in support of a restaurant in a BR (Business: Rural with a Preliminary Development Plan), filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Alexander Adams, Esq., represented the Petitioner. John Lehman, Elizabeth Bryan ad Gregory Philips testified in support of the petition. No one appeared in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows.

1. Letter from Dan O'Leary, President, Greater Highland Crossroads Association,

- authorizing John Lehman and Susan Scheidt as representatives, August 29, 2012
2. Copy of Zoning Board Case No. 1082M
 3. Photograph of proposed cooler area
 4. Illustrative Plan, landscaping and proposed berm at Highland Road
 5. Aerial image showing subject property and area subject to requested variances

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the south side of Highland Road about 600 feet northwest of MD 108. This property is identified as Tax Map 40, Grid 4, Parcel 50 and is also known as 12857 Highland Road (the Property).

2. Property Description. The 3.308-acre, irregularly shaped Property is improved with a two-story, frame, former single-family detached dwelling. The former dwelling sits in the front section of the Property, about 30 feet from the existing Highland Road paving and is legally noncomplying to front setback requirements because it predates the enactment of zoning regulations in Howard County. An addition to the structure's northwest side was added in 2001.

Existing improvements are located in the northwestern area and the remainder is generally open lawn. Access is currently provided via a short paved driveway near the Property's northwest corner. The former dwelling lies to the southeast of this driveway. The land slopes downward from Highland Road to a low point near a pond in the southwest corner.

3. Vicinal Properties. Excepting the B-1 (Business: General) Parcel 52 to the southeast, all adjacent properties are zoned RR-DEO (Rural Residential: Density Exchange Option). The northwestern property is improved with a two-story, brick, single-family detached dwelling

siting close to Highland Road. Behind this dwelling are several accessory structures. The parcel is also used as an excavating contractor business, which has operated from the site since about 1945.

Further northwest, Parcel 47 is improved with a two-story, frame, single-family detached dwelling, beyond which is the Highland post office. Across Highland Road, to the north and northeast, are several newer single-family detached dwellings. These are set back some distance from Highland Road and are generally screened from the road by existing vegetation. The B-1 zoned Parcel 52 to the southeast has a driveway leading to a commercial communications tower facility in the southwest corner. Further southeast is a former dwelling in commercial use and a general store at the southwest corner of MD 108 and Highland Road. Directly south is a wooded parcel improved with a single-family detached dwelling accessed via a long driveway on MD 108.

4. Roads. Highland Road has about 21 paved feet within a proposed 80-foot right-of-way (ROW). The posted speed limit is 35 MPH. The estimated sight distance from the approximate location of the proposed driveway is about 600 feet to the southeast and more than 500 feet to the northwest. According to Department of Public Works data, the traffic volume on Highland Road north of MD 108 was 4,306 average daily trips as of 2009.

5. Zoning History. The Property has a significant zoning history. Of relevance to this case is ZB Case No. 1082M, where the Petitioner sought and was granted a rezoning of the Property from RR-DEO to BR with a Preliminary Development Plan for a standard restaurant in 2010.

6. John Lehman testified to being a duly authorized representative of the Greater Highland Crossroads Association. He explained the Association's support of the rezoning to BR and the proposed standard restaurant. The Association also supports the requested variances.

7. Ms. Elizabeth Bryan, a property owner sharing the common lot line where the variances are sought, testified in support of the three variances. She also expressed her personal support for the proposed restaurant.

8. Gregory Philips, a Highland Holding Group LLC principal, testified to the recent zoning history of the Property. He explained the Petitioner's meetings with the community to find an appropriate use for the Property, and the eventual agreement to redevelop the former residence as a restaurant. This required rezoning the Property to BR with a preliminary development plan. The Zoning Board granted the rezoning (Petitioner Exhibit 2). The rezoning, however, imposed a 100-foot setback from the adjoining residentially zoned property, in contrast to the 30-foot setback under the prior RR zoning; hence the need for the three variances.

9. He testified that the site plan has the customer entrance on the left side, the dining area in the rear of the building and the cooking area on the right side. The bump-out and deck visible in Petitioner Exhibit 3 would be built up within the existing footprint. Employees would enter from the existing driveway to the right of the proposed restaurant and park in the small parking lot. The restaurant is designed to locate the operational component on the right side and table service on the left.

10. Explaining the three variance requests, Mr. Philips stated that the bump-out/cooler simply builds up from the deck footprint and this requires a 26.8-foot reduction in the 100-foot setback. To accommodate the proposed location of a dumpster with the parking area to the structure's right, a 53.3-foot reduction is necessary. Because this same parking area would be used for employee parking and deliveries, Petitioner is requesting an 82.5-foot reduction in the 100-foot setback.

11. According to Mr. Philips, a landscaped berm and additional landscaping is proposed along Highland Road. Petitioner Exhibit 4. This will reduce headlight glare across Highland Road.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a.(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the

property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

Existing structures and use areas generally are not considered "unique" features of a property. In this case, however, the front portion of the building was already lawfully nonconforming to the former single-family detached dwelling. The extent of the noncompliance increased when the Property was rezoned to BR, which establishes a 100-foot structure and use setback from the adjoining residentially zoned property. The Hearing Examiner concurs with the Technical Staff Report that the resultant increase in nonconformance is a unique physical conditional causing practical difficulties or unnecessary hardships in complying with the 100-foot setback requirement, in accordance with Section 130.B.2.a(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

Even with the reduced setbacks, the addition would not alter the essential character of the neighborhood or district. The approved variances allow the structure to remain in its historic location, rather than be relocated toward the center of the lot. Additionally, Zoning

Regulations Section 128.A.7 establishes Bulk Regulations Specific to Highland for B-1, B-2 and CCT zoned property located within 1,000 feet of the centerline of the MD 108 and 216 intersection.¹ The purpose of these bulk regulations is to ensure compatibility between the siting of new structures and long-existing structures, which tend to be located close to the paved portions of MD 108 and 216. Although these regulations do not apply to the BR zone, the granting of the variances will support this regulatory agenda. The requested variances therefore will not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties in complying strictly with the setback regulation arises from the location of the building, driveway, and other features and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

¹ Section 128.A.7: The following requirements apply to B-1, B-2 and CCT zoned property located within 1,000 feet of the centerline of the intersection of MD Route 108 and MD Route 216.

- a. The minimum structure and use setbacks from the public street right-of-way shall be as follows:
 - (1) For additions to existing structures, a distance equal to 10 feet or the setback of the existing structure, whichever is less.
 - (2) For new structures, a distance equal to 10 feet or the front setback of structures on the property or on an adjoining property, including any existing structures that are being replaced, whichever is less.
 - (3) In the CCT District, for uses other than parking uses, a distance equal to 10 feet.
 - (4) No additions to existing structure(s) or new structure(s) shall be permitted within an existing or proposed public road right-of-way.
- b. All other requirements of the B-1, B-2 and CCT districts shall apply.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed variances are intended to accommodate a reasonably sized standard restaurant. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER


Based upon the foregoing, it is this 19th Day of September 2012 by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Highland Holding Group LLC for variances to reduce the 100-foot structure and use setback from a residential district to (1) 73.2 feet for cooler access, (2) 43.7 feet for trash removal and (3) 16.5 feet for a parking use and delivery access in support of a restaurant in a BR (Business: Rural with a Preliminary Development Plan), is **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.